

**REMARKS/ARGUMENTS**

Claims 9, 23, 35, 45-46, 48 and 53-55 having previously been cancelled without prejudice or disclaimer of the subject matter recited therein, claims 1-8, 10-22, 24-34, 36-44, 47 and 49-52 are pending in the present application. In the Office Action mailed June 4, 2007, claims 1-8, 10-22, 24-34, 36-44, 47 and 49-52 were rejected. Applicant has thoroughly reviewed the outstanding Office Action, including the Examiner's remarks and the references cited therein. The following remarks are believed to be fully responsive to the Office Action. All of the pending claims at issue are believed to be patentable over the cited reference.

**Rejection of Claims 1-8, 10-11, 13-22, 24-34, 42-44, 49 and 56 Under 35 U.S.C. §102(b):**

Claims 1-8, 10-11, 13-22, 24-34, 42-44, 49 and 56 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,185,977 to Brockman et al. (Brockman '977). This rejection is respectfully traversed.

As stated in M.P.E.P. §2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In the present instance, the alleged prior art reference is Brockman '977 which, as is discussed below, fails to disclose the elements recited in claims 4-8 of the present application.

Brockman '977 discloses, in the title thereof, a storage terminal shelter, including side curtain assembly for truck/trailer hinge gap closure. Brockman '977 also discloses in FIGS. 2-5, a spring loaded joint 230 positioned adjacent to a shelter side frame 150.

However, Brockman '977 fails to disclose at least a "first panel [that] is adapted for essentially pivotal movement relative to the front face of the dock wall," as recited in claims 1-8, 10-11, 13-19, 42-43, and 56 of the present application. Brockman '977 also fails to disclose at least a "first panel [that] is adapted to be mountable to and pivotally moveable relative to the front face of the dock wall," as recited in claims 20-22, and 24-26 of the present application. In addition, Brockman '977 also fails to disclose at least a "rear edge of said rear first panel [that] is adapted for essentially pivotal movement relative to the front face of the dock wall," as recited in claims 27 and 28 of the present application. Further, Brockman '977 also fails to disclose at least a "first panel means [that] is pivotably mountable to the front face of the dock wall," as recited in claims 29-34 of the present application. Even further, Brockman '977 also fails to disclose at least a "first panel [that] is mountable to the front face of the dock wall," as recited in claim 44 of the present application. Brockman '977 therefore fails to anticipate the subject matter recited in claims 1-8, 10-11, 13-22, 24-34, 42-44 and 56 of the present application at least in view of the above-listed shortcomings.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claims 1-8, 10-11, 13-22, 24-34, 42-44, 49 and 56 under 35 U.S.C. § 102(b) as being anticipated by Brockman '977 is respectfully requested.

Rejection of Claims 50-52 Under 35 U.S.C. §102(b):

Claims 50-52 were rejected under 35 U.S.C. §102(b) as being anticipated over U.S. Patent No. 6,948,285 to Miller et al. (Miller '285). This rejection is respectfully traversed.

As discussed above, M.P.E.P. §2131 states that, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d

628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In the present instance, the alleged prior art reference is Miller '285 which, as is discussed below, fails to disclose the elements recited in claims 50-52 of the present application.

Miller '285 discloses, in the title thereof, a loading dock shelter with hollow side or head members. Miller '285 also discloses in FIGS. 2-6 thereof, a panel 28 fixedly mounted to a wall 22.

However, Miller '285 fails to disclose at least a "first panel [that] is adapted for essentially pivotable movement relative to a front face of the dock wall," as recited in claims 50-52 of the present application. Miller '285 therefore fails to anticipate the subject matter recited in claims 50-52 of the present application at least in view of the above-listed shortcomings.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claims 50-52 under 35 U.S.C. § 102(b) as being anticipated by Miller '285 is respectfully requested.

Rejection of Claims 37-40 Under 35 U.S.C. §103(a):

Claims 37-40 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brockman '977. This rejection is respectfully traversed.

It is alleged in the Office Action that Brockman '977 discloses all of the claimed limitations included in claims 37-40 and that the claimed method steps would have been obvious. However, contrary to this allegation, Brockman '977 actually fails to disclose or suggest at least, "flexibly mounting the second rear panel to the front face of the dock wall," as recited in claims 37-40 of the present application. Rather, as discussed above, Brockman '977 discloses a spring loaded joint 230 positioned adjacent to a shelter side frame 150. At least for this reason, the

above-discussed allegation is incorrect and Brockman '977 fails to render the claimed invention unpatentable.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claims 37-40 under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 is respectfully requested.

Rejection of Claim 12 Under 35 U.S.C. §103(a):

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Brockman '977. This rejection is respectfully traversed.

It is alleged in the Office Action that Brockman '977 discloses all of the claimed limitations except for the material being blow molded and that it would have been obvious to modify the structure disclosed in Brockman '977 to be blow molded because blow molding, extrusion, cold rolling, hot rolling, etc. are well known processes for forming panel.

However, contrary to this allegation and as discussed above, Brockman '977 actually fails to disclose or suggest at least a "first panel [that] is adapted for essentially pivotal movement relative to the front face of the dock wall," as recited in claims 1, upon which claim 12 depends. At least for this reason, the above-discussed allegation that Brockman '977 discloses all of the claimed limitations except for the material being blow molded is incorrect and Brockman '977 fails to render the claimed invention unpatentable.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claim 12 under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 is respectfully requested.

Rejection of Claim 36 Under 35 U.S.C. §103(a):

Claim 36 was rejected under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 in view of U.S. Patent No. 4,070,801 to O'Neal (O'Neal '801) as applied to claim 34 and further in view of U.S. Patent No. 5,174,075 to Alten (Alten '075). This rejection is respectfully traversed.

It is alleged in the Office Action that Brockman '977 discloses all of the claimed limitations except for a first corner panel adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted.

However, contrary to this allegation and as discussed above, Brockman '977 actually fails to disclose or suggest at least a "first panel means [that] is pivotably mountable to the front face of the dock wall," as recited in claim 34 of the present application, upon which claim 36 depends. At least for this reason, the above-discussed allegation that Brockman '977 discloses all of the claimed limitations except for a first corner panel adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted is incorrect. Also, neither O'Neal '801 nor Alten '075, taken either individually or in combination, overcomes this shortcoming of Brockman '977. As such, Brockman '977, taken either individually or in combination with O'Neal '801 and/or Alten '075, fails to render the claimed invention unpatentable.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claim 36 under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 in view of O'Neal '801 as applied to claim 34 and further in view of Alten '075 is respectfully requested.

Rejection of Claim 41 Under 35 U.S.C. §103(a):

Claim 41 was rejected under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 in view of O'Neal '801. This rejection is respectfully traversed.

It is alleged in the Office Action that Brockman '977 as modified by O'Neal '801 shows all of the claimed limitations. It is further alleged that the claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been obvious method steps of providing shelter with the modified structure for vehicle's ends of Brockman '977.

However, contrary to this allegation and as discussed above, Brockman '977 actually fails to disclose or suggest at least "flexibly mounting the second rear panel to the front face of the dock wall," as recited in claim 40 of the present application, upon which claim 41 depends. Also, O'Neal '801 does not overcome this shortcoming of Brockman '977. At least for this reason, the above-discussed allegation that Brockman '977 as modified by O'Neal '801 shows all of the claimed limitations is incorrect.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claim 41 under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 in view of O'Neal '801 is respectfully requested.

Rejection of Claim 47 Under 35 U.S.C. §103(a):

Claim 47 was rejected under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 in view of O'Neal '801. This rejection is respectfully traversed.

It is alleged in the Office Action that Brockman '977 as modified by O'Neal '801 shows all of the claimed limitations except for the spring being a mounting angle thermo-formed into the first panel. It is further alleged that it would have been obvious to modify the modified

structure of Brockman '977 to show the spring being a mounting angle thermo-formed into the first panel because having the spring being a mounting angle thermo-formed, spring steel allows for the spring member to be flexible and yet able to retain its shape.

However, contrary to this allegation and as discussed above, Brockman '977 actually fails to disclose or suggest at least "flexibly mounting the second rear panel to the front face of the dock wall," as recited in claim 44 of the present application, upon which claim 47 depends. Also, O'Neal '801 does not overcome this shortcoming of Brockman '977. At least for this reason, the above-discussed allegation that Brockman '977 as modified by O'Neal '801 shows all of the claimed limitations is incorrect.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claim 47 under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 in view of O'Neal '801 is respectfully requested.

Rejection of Claims 37-41 and 44 Under 35 U.S.C. §103(a):

Claims 37-41 and 44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brockman '977 in view of O'Neal '801. This rejection is respectfully traversed.

It is acknowledged in the Office Action that Brockman '977 fails to disclose the top portion assembly comprising a top front panel and a top rear panel. However, it is alleged in the Office Action that O'Neal '801 discloses such a portion assembly. It is further alleged that it would have been obvious to modify the structure disclosed in Brockman '977 to show the top portion assembly comprising a top front panel and a top rear panel, because it would allow for easy sealing of a vehicle top as disclosed by O'Neal '801.

However, contrary to this allegation and as discussed above, Brockman '977 actually fails to disclose or suggest at least, "flexibly mounting the second rear panel to the front face of

the dock wall,” as recited in claims 37-41 and 44 of the present application. Rather, as discussed above, Brockman ‘977 discloses a spring loaded joint 230 positioned adjacent to a shelter side frame 150. Also, O’Neal ‘801 fails to address or overcome this shortcoming of Brockman ‘977. At least for this reason, the above-discussed allegation is incorrect and Brockman ‘977 and O’Neal ‘801, taken either individually or in combination, fail to render the claimed invention unpatentable.

At least in view of the foregoing remarks, reconsideration and withdrawal of the rejection of claims 37-41 and 44 under 35 U.S.C. §103(a) as being unpatentable over Brockman ‘977 in view of O’Neal ‘801 is respectfully requested.

### **CONCLUSION**

At least in view of the foregoing claim amendments and remarks, Applicant respectfully requests all of the rejections to the claims be removed. If, for any reason, the Examiner disagrees, please call the undersigned attorney at 202-861-1716 in an effort to resolve any matter still outstanding before issuing another action. The undersigned attorney is confident that any issue which might remain can readily be worked out by telephone.



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In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No.

50-2036 with reference to Attorney Docket No. 87353.2961.

Respectfully submitted,

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